IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/01/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.1311 OF 1999
AND
W.M.P.NOS.1834 AND 7453 OF 1999

1. Union of India,
rep. by General Manager,
Southern Railway,
Chennai-600 003.

2. The Chief Personnel Officer,
Personnel Branch,
Southern Railway,
Chennai-600 003. .. Petitioners

-Vs-

1. Central Administrative Tribunal,
Madras Branch, Madras,
rep. by its Registrar,
Chennai-600 104.

2. K.Manorama

3. M.Siddiah

4. K.Rajagopalan Nair .. Respondents

For Petitioners :: Mr. R.Thiagarajan, SC
for M/s.V.Radhakrishnan

For Respondents :: Mr. C.K.Chandrasekaran,
for M/s.Row & Reddy for R2

Prayer: This Writ Petition is filed under Article 226 of the Constitution,
praying for issuance of Writ of Certiorari, for the reliefs as stated therein.

:ORDER

F.M.IBRAHIM KALIFULLA, J.
The challenge in this Writ Petition is to the order of the Central Administrative Tribunal dated 27-11-1998 in O.A.No.891 of 1996, wherein, the Tribunal, while holding that the selection of the third respondent as 'Assistant Law Officer-Group B post' in 'SC Category' was illegal, directed that his selection should be held to be in the ' unreserved vacancy' on his own merit, that the selection of fourth respondent in the unreserved vacancy was not proper, that however, since the fourth respondent had retired from service during the pendency of O. A., it did not call for any disturbance, that the second respondent should be empanelled in the reserved vacancy if she is otherwise qualified according to her seniority if no other schedule caste candidate had secured higher marks than that of the second respondent and directed the petitioners to post the second respondent from the date the third respondent was selected for the seniority to be reckoned for all other purposes. The Tribunal, however, held that the second respondent would not be entitled for the salary of that post till she actually assumes charge.

2. The petitioners, namely, the Union of India and the Chief Personnel Officer of the Southern Railway, would contend that the order of the Tribunal is liable to be interfered with inasmuch as, the same is not inconsonance with the Rules Governing the Promotion of Subordinate Staff.

3. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioners drew our attention to Rules 204.8 and 204.9 of the relevant Rules, as well as, the marks obtained by different candidates who participated in that selection including respondents 2 to 4, and contended that by virtue of Rule 204.8 and 204.9 and in view of the fact that the roster point as stood as on the date of the selection required the filling up of the reserved post in the first instance, the third respondent happened to be a reserved candidate being the senior most in the 'Group C' category was selected in that vacancy which necessitated the filling up of the next unreserved point from among the other candidates. According to the Senior counsel, inasmuch as, the fourth respondent stood second in the list was selected in the unreserved category. The learned Senior counsel further contended that since none of the candidates including the third respondent secured 80% marks and above in the gradation, there was no scope for considering either the third respondent or any other candidate out side the roster point in order to hold that the selection of the third respondent was to be treated as one in the unreserved category. The learned Senior counsel, therefore, contended that the order of the Tribunal in having interfered with the selection in the manner it has done was liable to be interfered with.

4. As against the above said contentions, Mr.C.K.Chandrasekharan, learned counsel appearing for the second respondent, would vehemently contend that when once the third respondent though a schedule caste candidate, having stood first in the gradation list by virtue of his seniority, as per Rule 204.9, his selection should have been made in the unreserved category as rightly held by the Tribunal and in which event, the reserved vacancy would automatically be available only to the second respondent who having qualified in the selection by virtue of securing the required marks as provided under Rule 204.8 in that reserved category. According to the learned counsel, as

the reserved vacancy was an unfilled vacancy of the previous selection for want of necessary candidate at that point of time, the reasoning of the Tribunal in holding that in the present selection, as the third respondent stood first in the gradation list by virtue of his seniority and also by virtue of having secured the qualifying marks, his selection ought to have been considered in the unreserved vacancy and not in the reserved vacancy. The learned counsel, therefore, contended that the order of the Tribunal does not call for any interference.

5. Having heard the learned counsel for either parties, we are of the view that the order of the Tribunal in having interfered with the selection of third and fourth respondents was not justified. In this context, the relevant Rules which required to be considered, viz., 20 2.3, 203.4, 203.6, 204.8 and 204.9 requires extraction for better appreciation. The said rules read as under.

"Rule 202.3: Reservation in favour of SCs/STs:- Rules of reservation apply in filling the vacancies in Group 'B' on the basis of selection. Only those eligible SCs/STs who are in the Zone of consideration determined in accordance with the rules, should be called for the selection. There is no carry forward of the element of reservation if either SCs/STs are not available in the zone of consideration or the available SCs/STs have not qualified for appointment against the reserved vacancies. In such situations the reserved vacancy should be de-reserved and filled only after de-reservation."

"203.4. Zone of consideration:- The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority as sown below -

1. Vacancies -- 5 employees
2. Vacancies -- 8 employees

3. Vacancies -- 10 employees
4. Vacancies and above employees equal three times the number of vacancies."

"203.6. If adequate number of SCs/STs are not available within the field so determined for consideration against reserved vacancies the field should be extended to five times the number of vacancies and only those SCs/STs coming in the extended field (and not the others) should be considered."

"204.8. The successful candidates shall be arranged as follows:-

(1) Those securing 80% marks and above graded as ' Outstanding'.

(2) Those securing between 60% marks and 79% marks graded as ' Good'."

204.9. The panel should consist of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation 'Outstanding' will be placed on

top followed by those securing the gradation, 'good' interse seniority within each group being maintained."

6. A conspectus reading of the above Rules disclose that for filling up of reserved vacancy, in the event of the number of reserved candidates not being available within the zone of consideration, the field should be extended five times the number of vacancies down below and only the reserved candidates coming in the extended field alone should be considered, that in the event of there being no scope for filling up of SCs/STs Vacancies, the same should be de-reserved and to be filled after such de-reservation.

7. As far as the mode of selection is concerned, there are two lines of categorisation provided, wherein, amongst the candidates who qualified in the selection, employees securing 80% marks and above in the written examination are to be placed on the top irrespective of their seniority while the rest of the candidates are to be arrayed as per their seniority in the existing Group 'C' posts. The persons, thus placed on top in the gradation list by virtue of securing 80% and above are to be treated as 'Outstanding candidates' whose selection is purely based on merit and merit alone and other considerations either caste or seniority or any other consideration will have no bearing in the matter of their selection to the post concerned. As far as the rest of the candidates are concerned, irrespective of variation in their qualifying marks, the seniority alone will prevail. In other words, while the outstanding candidate will have a march over all other candidates irrespective of the seniority in the existing Group 'C' post, when it relates to the candidates who come within the category of 'good', their seniority alone will prevail irrespective of the qualifying marks secured by them. To put it differently, amongst the candidates who are to be considered for selection by virtue of their performance as 'good', the gradation is made based on their seniority within the group from which they are considered for promotion.

8. When the present selection relating to respondents 3 and 4 visa-vis the claim of the second respondent is considered on the basis of the above principles, we find that vacancies were notified for the post of Assistant Law Officer by a communication of the second petitioner dated 10-11-1994. Of the two vacancies, one was in the unreserved category and the other was in the SC category. All 'Group C' employees including respondents 2 to 4 were advised to express their willingness to appear for the written examination. After the written examination, as many as 8 candidates including respondents 2 to 4 were qualified. None of the candidates secured 80% marks or more in the written examination and therefore, in the gradation list, they were arrayed according to their existing seniority in the 'Group C' post, whereby the third respondent was placed at No.1, while the fourth respondent was placed at No.2. The second respondent was in the fifth place in the order of seniority. Inasmuch as, there was no 'outstanding candidate', the selection for both the posts had to be done as per the gradation list which was based on the respective seniority of the candidates which resulted in selection of the third respondent in the SC point, while the fourth respondent came to be selected in the unreserved category. It is not in dispute that in the roster, SC point had to be filled in the first instance and the unreserved post had to be filled next. Therefore, as between the second and third

respondents who belonged to reserved category, as the third respondent was the senior most having achieved the first place in the gradation list by virtue of the minimum qualifying marks scored by him, his selection for the post of 'Assistant Law Officer' in the SC point became imperative. When once the post in the reserved category thus got filled up, there was no scope to consider the claim of the second respondent in the reserved category. Similarly in the unreserved category, as the second respondent being the next senior most in the gradation list having secured the required marks for getting a placement at the second level by virtue of his seniority, his selection under unreserved category had to be confirmed.

9. In the above stated circumstances, the grievance of the second respondent cannot be accepted. As none of the candidates were ' outstanding', the scope of consideration for the selection of the two posts had to be made based on the gradation list amongst the 'good candidates' which can be made only based on their seniority in the existing 'Group C posts'. The contention on behalf of the second respondent that even while considering the candidates coming within the 'good category', the selection ought to have been on a preferential basis cannot be accepted inasmuch as, the consideration for selection amongst the 'good candidate' is not solely based on merit alone, but it is based on seniority-cum-merit. In other words, amongst the candidates who come within the category of 'good', under Rule 204.9, there is no scope of elimination of other candidates unlike in the case of a candidate coming within the category of 'outstanding performance' where such a candidate would eliminate all other candidates irrespective of their caste, seniority, etc., and would be entitled for preferential treatment over others which would enable him to secure the post which is meant to be filled up from amongst the whole lot of candidates available for selection. Therefore, such a criterion which could be applied in the case of 'outstanding candidate' will have no application when it comes to the question of selection from amongst the candidates coming within the category of 'good performance'. Therefore, the contention raised on behalf of the second respondent that the third respondent though belongs to a reserved category, by virtue of his position as No.1 in the gradation list, the selection of the third respondent ought to have been done in the unreserved category excluding the claim of other selected candidates does not stand to reasoning. The fallacy in the contention of the second respondent on the misconception that what is applicable to 'outstanding candidate' is equally applicable to a 'good candidate' in the matter of selection unfortunately found favour with the Central Administrative Tribunal. While putting forth the said submission, the second respondent failed to note that under Rule 204.9, special consideration is provided only for ' outstanding candidates' and such a special consideration was not made available to the other candidates coming within the category of 'good performance'. Therefore, there is no scope for equating the candidates of 'good performance' with that of the candidates of 'outstanding performance'. When such a distinction between 'outstanding candidates' and 'good candidates' is so very explicit by virtue of the provisions contained in Rule 204.9, the contention of the second respondent on that misconception cannot be countenanced. Therefore, by no stretch of imagination, the selection of the third respondent could have been made under unreserved category, inasmuch as, once when he stood first in the gradation list by virtue of his 'good

performance' along with others by virtue of his seniority, he had to be considered for selection in the 'SC category' which was the roster point in that selection and when once his selection in that 'SC category' was rightly made, there was no scope for considering the claim of the second respondent in that category. Therefore, we do not find any justification at all in the claim of the second respondent. Unfortunately, the Tribunal, without appreciating the special consideration provided under Rule 204.9 in respect of an 'outstanding candidate', totally misled itself by holding that such a special consideration would equally be available to the candidates who became eligible for being considered in the selection by virtue of their 'good performance' alone, whose claim cannot be considered solely based on merit, but based on seniority and merit. The Tribunal, having miserably failed to appreciate the distinction between the 'outstanding candidate' and 'good candidate', has unfortunately interfered with the selection rightly made by the petitioners in respect of respondents 3 and 4. The order of the Tribunal having thus interfered with the rightful selection of the respondents 3 and 4, is liable to be set aside.

10. The judgment relied upon by the learned counsel for the second respondent reported in 1996(6) SCC 720 (B.V.SIVAIAH AND OTHERS versus K.ADDANKI BABU AND OTHERS), in particular paragraph 18 does not apply to the facts of this case inasmuch as what is stated therein is that what are the criterion to be applied in the case of promotion based on seniority-cum-merit. It is only stated that how the assessment can be made by assigning marks in order to find out the merit of a candidate while considering the candidates for promotion on senioritycum-merit basis. Therefore, that decision does not in any way advance the case of the second respondent.

In the result, the Writ Petition is allowed. The order of the Tribunal is set aside. In the circumstances of the case, we make no order as to costs. Consequently, W.M.Ps are closed.

Index: Yes
Internet: Yes
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1. The General Manager,
Union of India,
Southern Railway,
Chennai-600 003.

2. The Chief Personnel Officer,
Personnel Branch,
Southern Railway,
Chennai-600 003.

3. The Registrar,
Central Administrative Tribunal,
Madras Branch, Madras,
Chennai-600 104.